

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cr-221-FDW-DCK-1

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DENT HALL TURNER,)
)
Defendant.)
)

ORDER

THIS MATTER comes before the Court on its November 4, 2021 Order, (Doc. No. 30).

Defendant pleaded guilty to a single count of possession with intent to distribute five grams or more of methamphetamine and aiding and abetting the same, and a second count was dismissed. (Doc. Nos. 3, 17). The Judgment was docketed on September 10, 2020. (Doc. No. 26). Defendant did not appeal.

On August 5, 2021,¹ Defendant filed a *pro se* Letter in which he argues *inter alia* that his lawyer provided ineffective assistance in relation to a plea offer. (Doc. No. 28). On November 4, 2021, the Court informed the Defendant that it intended to characterize his Letter as a Motion to Vacate pursuant to 28 U.S.C. § 2255. (Doc. No. 30). The Court provided the Defendant with warnings pursuant to United States v. Castro, 540 U.S. 375 (2003), granted him 30 days to object, and provided him the opportunity to file a superseding Amended Motion to Vacate. (Id.). The Court cautioned the Defendant that, if he failed to timely respond to the Order, the Court would recharacterize his Letter as a § 2255 Motion to Vacate. (Id. at 3-4).

¹ The postmark date is used as the filing date because the Defendant did not certify the date on which he placed the Letter, dated August 3, 2021, in the prison's mail system. See Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prisoner mailbox rule); Rule 3(d), 28 U.S.C.A. foll. § 2255 (addressing inmate filings).

The Defendant has failed to respond to the Court's November 4 Order and the time to do so has expired. The Letter, (Doc. No. 28), is therefore recharacterized as a § 2255 Motion to Vacate and the Clerk will be instructed to open it in a new civil case.

The instant § 2255 Motion to Vacate is not verified (signed under penalty of perjury). See Rule 2(b)(5), 28 U.S.C. foll. § 2255; 28 U.S.C. § 1746. Defendant shall, within **fourteen (14) days** of this Order, verify the § 2255 Motion to Vacate, (Doc. No. 1), using the Verification of Motion to Vacate form supplied with this Order. Defendant is cautioned that failure to timely comply with this Order will likely result in dismissal of this case without further notice.

IT IS, THEREFORE, ORDERED that:

1. Defendant's *pro se* Letter (Doc. No. 28), is recharacterized as a § 2255 Motion to Vacate. The Clerk is instructed to open the Letter as a § 2255 Motion to Vacate in a new civil case.
2. Defendant shall, within **fourteen (14) days** of this Order, verify the Motion to Vacate using the Verification of Motion to Vacate form attached to this Order. Defendant is cautioned that failure to comply with this Order will likely result in this case's dismissal without further notice.
3. The Clerk is further instructed to mail a copy of the Motion to Vacate, this Order, and the attached Verification of Motion to Vacate form to Defendant.

Signed: December 16, 2021



Frank D. Whitney
United States District Judge



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:21-cv-____-FDW
3:19-cr-221-FDW-DCK-1

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DENT HALL TURNER,)	<u>VERIFIATION OF</u>
)	<u>MOTION TO VACATE</u>
Defendant.)	
)	

Pursuant to Rule 2(b)(5) of the Rules Governing § 2255 Proceedings, I declare (or certify, verify, or state) under penalty of perjury that the § 2255 Motion to Vacate, (Doc. No. 1), which I failed to verify, is true and correct.

Dent Hall Turner

Executed on (Date)